

ATTACHMENT B.1: EXPERIENCE FORM

The Department reserves the right to verify all information provided in this Experience Form. Solar Provider ("Prime Firm") will be automatically disqualified if all sections are not completed.

PART I: INFORMATION ABOUT THE PROJECT TEAM

1. Provide the contact information for the Prime Firm. Also briefly describe the role of the Prime Firm.

Prime Firm Name: _____
Role of Prime Firm: _____
Prime Contact Person: _____
Prime Address: _____
Prime Phone: _____ Fax: _____
Prime Email Address: _____
Federal Tax ID (EIN): _____
Date Incorporated: _____
Size of Business Entity in MD: _____

2. Identify and provide contact information for all other firms associated with designing, building and/or operating and maintaining the Projects (excluding PPA investor and/or other financing firms if a separate organization) with which your firm may partner or subcontract. Identify, and if necessary, describe each firm's role (e.g., project integrator, system designer, construction management, post construction operations and maintenance, etc.). If needed, please add additional pages.

Firm 1.

Entity Name: _____
Role of Entity: _____
Contact Person: _____
Address: _____
Phone: _____ Fax: _____
Email Address: _____
Year first solar project completed: _____

Firm 2.

Entity Name: _____
Role of Entity: _____
Contact Person: _____
Address: _____
Phone: _____ Fax: _____
Email Address: _____
Year first solar project
completed: _____

Firm 3.

Entity Name: _____
Role of Entity: _____
Contact Person: _____
Address: _____
Phone: _____ Fax: _____
Email Address: _____
Year first solar project
completed: _____

Firm 4.

Entity Name: _____
Role of Entity: _____
Contact Person: _____
Address: _____
Phone: _____ Fax: _____
Email Address: _____
Year first solar project
completed: _____

Firm 5.

Entity Name: _____
Role of Entity: _____
Contact Person: _____
Address: _____
Phone: _____ Fax: _____
Email Address: _____
Year first solar project
completed: _____

PART II: ESSENTIAL REQUIREMENTS FOR THE PROJECT TEAM

NOTE: Prime Firm will be automatically disqualified if the answer to any of questions 1 - 7 is "No." All questions below MUST be answered. Information provided will be used in the RFP evaluation for qualified offerors.

1. Has the Prime Firm provided a list of five (5) project references for which at least one team member from Part I has participated as part of a project team, which totals at least two (2) MW?

☐ Yes ☐ No

If yes, please provide the following summary and reference information on these projects:

Project Experience Summary Table

	# Projects	kW-DC	Financing Type
Maryland			
Mid-Atlantic			
National			
TOTAL			

Project 1

Location: _____
 Size (kW-DC): _____
 Client: _____
 Client Type (Commercial, Government, Other): _____
 Client Financing Type: _____
 Project Contact Name: _____
 Project Contact Email: _____
 Project Contact Phone: _____
 List partner firm(s) and role from Part I that worked on this project: _____

Project 2

Location: _____
 Size (kW-DC): _____
 Client: _____
 Client Type (Commercial, Government, Other): _____
 Client Financing Type: _____
 Project Contact Name: _____
 Project Contact Email: _____
 Project Contact Phone: _____

List partner firm(s) and role from
Part I that worked on this project:

Project 3:

Location:

Size (kW-DC):

Client:

Client Type (Commercial,
Government, Other):

Client Financing Type:

Project Contact Name:

Project Contact Email:

Project Contact Phone:

List partner firm(s) and role from
Part I that worked on this project:

Project 4:

Location:

Size (kW-DC):

Client:

Client Type (Commercial,
Government, Other):

Client Financing Type:

Project Contact Name:

Project Contact Email:

Project Contact Phone:

List partner firm(s) and role from
Part I that worked on this project:

Project 5:

Location:

Size (kW-DC):

Client:

Client Type (Commercial,
Government, Other):

Client Financing Type:

Project Contact Name:

Project Contact Email:

Project Contact Phone:

List partner firm(s) and role from
Part I that worked on this project:

2. Has the client for at least one of the projects listed above been a public sector agency in the Mid-Atlantic region?
- ☐ Yes ☐ No
3. Has the **Prime Firm**, listed above in Part I, been regularly and continuously engaged in the business of providing solar electric power generation systems for at least five (5) years?
- ☐ Yes ☐ No
4. Does the **Prime Firm**, listed above in Part I, have experience with at least three (3) completed and operational installations of solar electric power generation systems at municipal or public facilities?
- ☐ Yes ☐ No
5. Does the **Prime Firm**, listed above in Part I, have experience with at least one (1) completed and operational installation of solar electric power generation systems at a multi-story parking garage?
- ☐ Yes ☐ No
6. Has the **Construction Management Entity**, listed above in Part I (if difference from Prime Firm), completed at least three (3) operational installations of solar energy power generation systems at municipal or public facilities? (If the Construction Management Entity is the Prime Firm, please answer, *Yes*).
- ☐ Yes ☐ No
7. Does the Prime Firm or one of the entities listed above in Part I hold any active and relevant contractor licenses in Maryland?
- ☐ Yes ☐ No

If Yes, provide Contractor's Maryland Contractors License Number, the name under which license is held, and expiration date:

Name of License Holder: _____

Maryland Contractors License Number: _____

License Type: _____

Expiration Date of License: _____

Role of Licensed Holder in Project Team (Part I): _____

8. Does the Post Construction Operations and Maintenance Entity, listed above in Part I, have experience with at least three (3) completed and operational installations of solar energy power generation systems at municipal or public facilities?

☐ Yes ☐ No

PART III: FINANCING PARTNERS

A requirement of the Prime Firm is the submission of a minimum of one (1) Letter of Interest from PPA financial investor ("Financier") which has successfully delivered projects. Alternatively, if the offeror "self-finances" and does not use outside financier, please provide a letter that demonstrates the sufficiency of your self-financing.

NOTE: Offeror will be automatically disqualified if the answer to questions 1 – 3 below is "No."

1. Has the Prime Firm submitted one (1) Letter of Interest from Financier or a letter regarding self-financing?

☐ Yes ☐ No

2. Has the financier submitted Letter of Interest or the Prime Firm (if self-financing) successfully financed at least three (3) operational projects in the past five (5) years?

☐ Yes ☐ No

If yes, please identify the projects (add additional pages if needed):

Financier #1 or Prime Firm

Project Financing 1

Location: _____
Size (kW-DC): _____
Client: _____
Client Financing Type: _____
Project Contact Name: _____
Project Contact Email: _____
Project Contact Phone: _____
Prime Firm: _____
Financing Firm Contact: _____

Project Financing 2

Location: _____
Size (kW-DC): _____

Client: _____
Client Financing Type: _____
Project Contact Name: _____
Project Contact Email: _____
Project Contact Phone: _____
Prime Firm: _____
Financing Firm Contact: _____

Project Financing 3

Location: _____
Size (kW-DC): _____
Client: _____
Client Financing Type: _____
Project Contact Name: _____
Project Contact Email: _____
Project Contact Phone: _____
Prime Firm: _____
Financing Firm Contact: _____

3. Does Prime Firm have experience with at least five (5) power purchase agreement contracts with total contracts representing at least \$3 million in project construction costs?

☐ Yes ☐ No

PART IV: PRIOR EXPERIENCE

NOTE: Prime Firm will be automatically disqualified if the answer to any of questions 1 - 7 is "Yes." All questions below MUST be answered.

1. Has the Prime Firm or any of the partners listed above that are associated with designing, building and/or operating and maintaining the projects ever defaulted on a design, construction or operations and maintenance contract?
- ☐ Yes ☐ No
2. Within the last five (5) years, has a surety firm completed a contract on behalf of the Prime Firm or any of its partners listed above, or paid for project completion because one of the members was in default?
- ☐ Yes ☐ No

3. At the time of submitting this Form, has the Prime Firm or any of its partners listed above been ineligible to bid on or be awarded a public works contract, or perform as a sub-contractor on a public works contract due to Maryland Labor Code?
- ☐ Yes ☐ No
4. At any time during the last five (5) years, has the Prime Firm or any of its partners listed above been convicted of a crime involving the awarding of a contract of a government construction project, or a crime relating to the bidding or performance of a government contract?
- ☐ Yes ☐ No
5. Has the Prime Firm or any of the non-financial partners listed above, including any of their owners or officers, ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?
- ☐ Yes ☐ No
6. Has the Prime Firm or any of the non-financial partners listed above, including any of their owners or officers, ever been convicted of a crime involving any federal, state, or local law related to construction?
- ☐ Yes ☐ No
7. Has the Prime Firm or any of the non-financial partners listed above, including any of their owners or officers, ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
- ☐ Yes ☐ No

PART V: CERTIFICATION

I, the undersigned, am authorized to make this verification on behalf of the Prime Firm,
_____. I have read the foregoing Form. I am familiar with its
contents and, based upon information available to me, the contents are true and correct. I declare under
penalty of perjury under the laws of Maryland that the foregoing is true and correct.

Executed at		,		on	
	(City)		(State)		(Date)

(Signature)

(Printed Name)

(Firm)

(Title)

PROVIDER: [REDACTED]

Legend	
Provided Data	
Formula	
Required Data	

Provider shall enter quantities and models of major components into yellow-highlighted cells below.

Provider shall also enter Year 1 Production Estimates into yellow-highlighted cells in Production Estimates tab of this worksheet.

Provider shall enter PPA pricing (with and without SRECs) **AND** Direct Purchase pricing in yellow-highlighted cells below.

Provider shall also enter Operations & Maintenance pricing for Purchases as a separate line item. Such pricing shall be evaluated separately from system pricing. Costs shall be submitted on this form as is. Provider entries will only be acceptable in yellow highlighted cells.

Costs shall be submitted on this form as-is. Provider entries will only be acceptable in yellow-highlighted cells. No alterations or changes of any kind to sites, formulas, or formatting are permitted. Bid responses that do not

Prices quoted below shall include all taxes and all other charges, including travel expenses, and is the price the Department will pay for the term of any contract that is a result of this bid.

Bid pricing shall remain open to acceptance by the Department and is irrevocable for a period of 120 days, unless otherwise specified in the bid documents.

Pricing should anticipate +/- 10% site movement

[illegible]

“

Price based on Solar Provider retaining SRECs for the first three years; Solar Provider keeps local incentives, if applicable

[illegible]

Weighted Average PPA Price #DIV/0!

SREC Value upon which Price is Based [REDACTED]

Price based on Buyer (Montgomery County) retaining all SRECs; Solar Provider keeps local incentives, if applicable

[illegible]

Weighted Average PPA Price	#DIV/0!
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Price

Price based on Buyer (Montgomery County) retaining all SRECs; Buyer keeps local incentives, if applicable

[illegible]

Total Purchase Price \$ -

ATTACHMENT B.3 – SOLAR PROVIDER’S CERTIFICATION OF COST AND PRICE

The Director, Department of Transportation has the authority to require that contract cost and pricing principles are followed. Cost and Pricing Data must be submitted by Solar Providers or Solar Providers in the attached format prior to the execution of any contract or contract amendment based on the following:

1. A competitively negotiated contract valued at more than \$100,000.
2. A non-competitive contract valued at more than \$50,000.
3. Any contract modification for which the price adjustment is expected to exceed \$50,000, except contract modifications that is fully in accordance with the terms and conditions of the contract.
4. Any other contracts or contracts modification, as may be required by the CAO or Director.

SOLAR PROVIDER’S CERTIFICATION

This cost proposal reflects our best estimates and/or actual costs as of this date and conforms to the cost exhibits and schedules provided by the County’s Department of Transportation. By submitting this proposal, the Solar Provider grants the contracting officer or an authorized representative the right to examine, as the basis for pricing that will permit an adequate evaluation of the proposed price, books, records, documents, and other types of factual information, if specifically referenced or included in the cost proposal.

The Solar Provider also agrees that the price to the County, including profit or fee, may, at the option of the County, be adjusted to reduce the price to the County to the extent that the price was based on inaccurate, incomplete, or non-current data supplied by the Solar Provider.

Name

Title

Name of Firm

Date of Submission

Signature of Authorized Representative

COST AND PRICE REQUIREMENTS

By submitting your proposal, you, if selected for negotiation, grant the Contracting Officer or an authorized representative the right to examine those books, records, documents and any other supporting data that will permit adequate evaluation of the proposed price. This right may be exercised at any time prior to award of a contract. The Montgomery County Government may utilize an independent Solar Provider for cost and price analysis or to examine your books and records.

The Cost/price for any resultant contract will be negotiated on the basis of the successful Solar Provider's normal estimating and/or accounting system or the system set forth in Cost Accounting Standards Board Disclosure Statement as required by Public Law 100-679.

Prior to contract execution, the intended awardee may be required to provide the following information;

- A. Latest and previous year's financial statement or profit and loss statement.
- B. Burdened rate verification detailing the composition and value of the elements of Fringe Benefits, Overhead, General and Administrative Overhead, Profit or Fee.

ATTACHMENT B.4: EXCEPTIONS FORM
PPA EXCEPTIONS, CLARIFICATIONS, AMENDMENTS**Bidder Name:** _____

List below requests for clarifications, exceptions and amendments, if any, to the RFP and associated Bid Documents, and submit with your bid response.

The Department is under no obligation to accept any exceptions and such exceptions may be a basis for bid disqualification.

Reference to:			Description
Page No.	Section	Item No.	
p. 23	D	1.c.	<i>Offeror takes exception to...</i>

**Print additional pages as necessary*

ATTACHMENT B.5 – INSTRUCTIONS FOR ACKNOWLEDGEMENT PAGE**INSTRUCTIONS**

The Acknowledgement page is to be submitted with the Stage 1 Proposal.

REC Purchase Terms and Conditions of Contract:

The provider must include a signed acknowledgment that all of the “Electricity Purchase Terms and Conditions of Contract between Participant and Solar Provider” for this RFEP (**Attachment C.1**) will be applicable to each contract that is expected to result from a subsequent award. Proposals that do not include this acknowledgment page may be rejected. The requirement may be satisfied by executing and returning (with the proposal) the acknowledgment shown below.

Amendments to RFEP:

Providers must acknowledge receipt of any Amendments to this procurement in the space indicated below, and with the understanding that except to the extent specifically set forth in the Amendments, the remaining terms of the RFEP will remain the same.

Name and Signature Requirements for Proposals and Contracts:

The correct legal business name of the provider must be used in all contracts. A trade name (i.e., a shortened or different name under which the firm does business) should not be used when the legal name is different. Corporations must have names that comply with the laws of the states and/or federal jurisdictions in which they conduct business. The provider provider’s signature must conform to the following:

Where the provider is a corporation, a corporate officer must sign.

Where the provider is a partnership, at least one general partner must sign.

Where the provider is a limited liability company, an authorized representative must sign

Where the provider is a sole proprietor, the proprietor must sign.

ACKNOWLEDGMENT**ACKNOWLEDGMENT**

The Solar Provider must include a signed acknowledgment that all the terms and conditions of the offer may, at the County's option, be made applicable in any contract issued as a result of this Solicitation. Offers that do not include such an acknowledgment may be rejected. Executing and returning (with the offer) the acknowledgment shown below will satisfy this requirement.

The undersigned agrees that all the terms and conditions of this Solicitation and offer may, at the County's option, be made applicable in any contract issued as a result of this Solicitation.

Business Firm's Typed Name: _____

Printed Name and Title of
Person Authorized to Sign Proposal: _____

Signature: _____ Date: _____

NAME AND SIGNATURE REQUIREMENTS FOR PROPOSALS AND CONTRACTS

The correct legal business name of the Solar Provider must be used in all contracts. A trade name (i.e., a shortened or different name under which the firm does business) must not be used when the legal name is different. Corporations must have names that comply with State Law. The Solar Provider's signature must conform to the following:

All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of this offer or a contract is a representation by the person signing that the person signing is authorized to do so on behalf of the Solar Provider or Solar Provider.

By submitting a proposal under this Solicitation, the Solar Provider agrees that Montgomery County has within 120 days after the due date in order to accept the proposal.

ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS

The Solar Provider acknowledges receipt of the following Amendment(s) to the Solicitation:

Amendment Number

Date

ATTACHMENT B.6: MWCOG RIDER CLAUSE**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS RIDER CLAUSE**

USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.

- A. If authorized by the Solar Provider(s), resultant contract(s) will be extended to any or all of the listed members as designated by the Solar Provider to purchase at contract prices in accordance with contract terms.
- B. Any member utilizing such contract(s) will place its own order(s) directly with the successful Solar Provider. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your proposal.
- D. It is the awarded Solar Provider's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

SOLAR PROVIDER'S AUTHORIZATION TO EXTEND CONTRACT:

YES	NO	JURISDICTION	YES	NO	JURISDICTION
		Alexandria, Virginia			Manassas Park, Virginia
		Alexandria Public Schools			Maryland-National Capital Park & Planning Commission
		Alexandria Sanitation County			Metropolitan Washington Airports County
		Arlington County, Virginia			Metropolitan Washington Council of Governments
		Arlington County Public Schools			Montgomery College
		Bladensburg, Maryland			Montgomery County, Maryland
		Bowie, Maryland			Montgomery County Public Schools
		Charles County Public Schools			Northern Virginia Community College
		College Park, Maryland			OmniRide
		Culpeper County, Virginia			Potomac & Rappahannock Transportation Commission
		District of Columbia			Prince George's County, Maryland
		District of Columbia Courts			Prince George's County Public Schools
		District of Columbia Public Schools			Prince William County, Virginia
		District of Columbia Water & Sewer County			Prince William County Public Schools
		Fairfax, Virginia			Prince William County Service County
		Fairfax County, Virginia			Rockville, Maryland
		Fairfax County Water County			Spotsylvania County Schools
		Falls Church, Virginia			Stafford County, Virginia
		Fauquier County Schools & Government, Virginia			Takoma Park, Maryland
		Frederick, Maryland			Upper Occoquan Sewage County
		Frederick County, Maryland			Vienna, Virginia
		Gaithersburg, Maryland			Virginia Railway Express
		Greenbelt, Maryland			Washington Metropolitan Area Transit County
		Herndon, Virginia			Washington Suburban Sanitary Commission
		Leesburg, Virginia			Winchester, Virginia
		Loudoun County, Virginia			Winchester Public Schools
		Loudoun County Public Schools			
		Loudoun County Sanitation County			
		Manassas, Virginia			
		City of Manassas Public Schools			

Solar Provider Name

ATTACHMENT B.7 – CERTIFICATIONS AND REFERENCES

(TO BE SUBMITTED WITH STAGE 1 PROPOSAL)

I, _____ am the _____ of
_____ (Provider), and I am duly authorized to provide the
following certifications and information regarding this entity:

1. The provider will provide the County with documentation, if requested, supporting the certifications made above.
2. Additionally, within 10 days after the award of any contract(s) to the provider, it will comply with, and provide documentary proof to the County thereof, the insurance requirements set forth in this RFEP. **The provider attaches hereto its letter(s) of intent from its surety, insurance, and/or other provider demonstrating its ability to comply with these insurance requirements.**

/s/ _____

Date: _____

The County may at its discretion contact the following persons as references for the provider (provide a minimum of three names):

Contact Name and Title
Telephone Number

Organization and Address

ATTACHMENT B.8: MANDATORY INSURANCE REQUIREMENTS

Solar System Installations at Various County Buildings

Public Private Partnership – Install, Own and Operate Systems

County will not pay for the parts or installation, but will buy electricity for @ 15-20 year time period after installation

Prior to the execution of the contract by the County, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Automobile Liability Coverage

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Builders Risk

The Contractor shall provide a Builder's All Risk Policy including fire and extended coverage to protect the interest of the County, contractor and sub-contractors against loss caused by the perils insured in the amount of 100% of the insurable valued of the project. The coverage must be written on a completed value form. The policy shall also endorse a demolition and clearing clause, extra expense and loss of use coverages with a sub-limit of \$500,000 per occurrence.

Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, Maryland
DOT / Parking Management / Shri Gondhalekar
100 Edison Park Drive, 4th floor
Gaithersburg, Maryland 20878

CERTIFICATE OF INSURANCE REVIEW FORM

date:

PLEASE REVIEW THE FOLLOWING INFORMATION AND ATTACHMENTS TO THIS FORM FOR (CHECK ONE):

<input type="checkbox"/> PRE-BID REQUIREMENTS	<input type="checkbox"/> CONTRACT REQUIREMENTS
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ATTACHMENTS: (CHECK AS APPROPRIATE)

<input type="checkbox"/>	CERTIFICATE OF INSURANCE				
<input type="checkbox"/>	INSURANCE REQUIREMENTS SPECIFIED IN:	<input type="checkbox"/> RFP	<input type="checkbox"/> IFB	<input type="checkbox"/> CONTRACT	<input type="checkbox"/> AMENDMENT
<input type="checkbox"/>	SPECIFICATIONS/SCOPE OF SERVICES OF THE:	<input type="checkbox"/> RFP <input type="checkbox"/> RFP	<input type="checkbox"/> IFB	<input type="checkbox"/> CONTRACT	<input type="checkbox"/> AMENDMENT

	POWER PURCHASE AGREEMENT	CONTRACT VALUE:	County will not pay for the parts or installation, but will buy energy once completed
NAME OF CONTRACTOR:			
SERVICES PROVIDED:	Solar System Installations at Various County Buildings Public Private Partnership – Install, Own and Operate Systems - County will not pay for the parts or installation, but will buy electricity for @ 15-20 year time period after installation		
AGENCY/DIVISION:	Department of Transportation, Parking Management		
CONTRACT MANAGER:	Shri Gondhalekar	PHONE 240-777- 8724	FAX:
	Not a procurement contract	PHONE #	FAX:

Comments:

<input checked="" type="checkbox"/> THE ATTACHED SCOPE OF SERVICES REQUIRES THE FOLLOWING INSURANCE COVERAGE:	<input type="checkbox"/> THE ATTACHED CERTIFICATE OF INSURANCE:		
REQUIREMENTS:	MEETS REQUIREMENTS	DOES NOT MEET REQUIREMENTS	RECOMMEND WAIVER
<input checked="" type="checkbox"/> WORKERS' COMPENSATION & EMPLOYERS LIABILITY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY \$1,000,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY \$1,000,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> PROFESSIONAL LIABILITY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> ADDITIONAL INSURED	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> NOTICE OF CANCELLATION PER POLICY PROVISIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> BUILDERS RISK	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PLEASE LIST THE REASON(S) FOR WAIVER, IF APPLICABLE, IN THE COMMENTS SECTION BELOW.

Comments:

PREPARED/APPROVED: WINNIE JORDAN

date

INSURANCE SECTION, DIVISION OF RISK MANAGEMENT

Based on Risk Management's recommendation, I approve a waiver of the above checked items.

Approved by Contracting Officer, Procurement: _____ DATE: _____

RISK MANAGEMENT, PLEASE RETURN THIS FORM TO:	
--	--

PMMD-62R

Copy to Procurement

ATTACHMENT B.9 – MINORITY BUSINESS PROGRAM & OFFEROR’S REPRESENTATION

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 - “Minority Contracting”, Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Department of Transportation or his/her designee, who may waive this requirement.

A sample of the MFD Report of payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Department of Transportation or his /her designee, determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the MFD Program, Office of Business Relations and Compliance at (240) 777-9912.

Offerors are encouraged (but not required) to complete the following:

I hereby represent that this is a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

Attach one of the following certification documents from: Maryland Department of Transportation (MDOT); Virginia Small, Women & Minority-Owned Business; Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women’s Business Enterprise National Council; or City of Baltimore.



Montgomery County
Office Of Business

Relations and Compliance

SAMPLE ONLY! NOT TO BE USED BY PRIME

MFD Report of Payments Received

For Office Use

MFD Subcontractor Company Name: _____

Prime Contractor Company Name: _____

Contract Number/Title:

Project Location:

MFD Subcontract Amount: \$ _____

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of _____, my company received \$ _____ for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO DATE: \$ _____

TOTAL PAYMENTS RECEIVED TO DATE: \$ _____

Are you experiencing any contract problems with the prime contractor and/or the project?

YES ☐ NO ☐

Comments: _____

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

(TYPED/PRINTED COMPANY NAME)

(TYPED/PRINTED NAME OF COMPANY OFFICIAL)

(TITLE)

(SIGNATURE OF COMPANY OFFICIAL)

(DATE)

() -
TELEPHONE

() -
FAX

E-MAIL

Mail to: Alvin Boss, Program Specialist II
255 Rockville Pike, Ste. 180
Rockville, MD 20850

**MINORITY-OWNED BUSINESS ADDENDUM TO GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY
AND CONTRACTOR**

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Procurement Officer. The letter must explain why a waiver is appropriate. The Director of the Department of Transportation or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.
- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.
- H. If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Department of Transportation must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN

Contractors

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

A. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.

B. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALEASIAN AMERICAN
HISPANIC AMERICANDISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor _____

This subcontractor will provide the following goods and/or services: _____

2. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor _____

This subcontractor will provide the following goods and/or services: _____

3. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor _____

This subcontractor will provide the following goods and/or services: _____

4. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor _____

This subcontractor will provide the following goods and/or services: _____

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation through out the life of the contract or the basis for a full waiver request:

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

MFD Program Officer Date: _____

MFD Program Officer Date: _____

Full Waiver Approved:

Partial Waiver Approved:

Director
Department of Transportation Date: _____

Director
Department of Transportation Date: _____

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. _____) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

Signature

Typed Name

Title

Date

APPROVED:

Director, Department of Transportation

Date

Section 7.3.3.4(a) of the Procurement Regulations requires:

The Contractor to notify the Director, Department of Transportation of any proposed change to the Subcontractor Performance Plan.

ATTACHMENT B.10 – WAGE REQUIREMENTS FOR SERVICES CONTRACT ADDENDUM TO THE GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY AND CONTRACTOR

- A. This contract is subject to the wage requirements of Section 11B-33A of the Montgomery County Code. A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the wage requirements of this Section, subject to exceptions from coverage for particular contractors noted in 11B-33A(b) and for particular employees noted in 11B-33A(f).
- B. Conflicting requirements (11B-33A(g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. Nonprofit organizations who are exempt from the wage requirements under 11B-33A must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees.
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirements in 11B-33A.
- E. Each contractor and subcontractor covered under 11B-33A must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices, approved and/or supplied by the County, informing employees of the wage requirements.
- F. An employer must comply with Section 11B-33A during the initial term of the contract and all subsequent renewal periods and must pay an increase adjustment in this wage rate, if any, automatically effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right or filing a complaint of a violation, under the wage requirements.
- H. The sanctions under Section 11B-33(b), that apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements under 11B-33A.
- I. The County may assess liquidated damages for any noncompliance by contractor with the Section 11B-33A wage requirements at the rate of 1% per day of the total contract amount, or for a requirements contract, the estimated annual contract value, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under the Section 11B-33A wage requirements and recover from Contractor any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right or claim under the 11B-33A wage requirements.
- J. The Director may conduct random audits to assure compliance with Section 11B-33A. The Director may conduct an on-site inspection(s) for the purpose of determining compliance.
- K. If the Contractor fails, upon request by the Director, to submit documentation demonstrating compliance with Section 11B-33A to the satisfaction of the Director, the Contractor is in breach of this contract. In the event of a breach of contract under this paragraph, upon request by the County, the Contractor must pay to the County liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County.

Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

Wage Requirements Certification

(Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Please provide in the spaces below the contact name and information of the individual designated by your firm to monitor your compliance with the County's wage requirements, unless exempt under Section 11B-33A(b) (see section B. below):

Contact Name			Title	
Phone Number		Fax Number		
E-mail Address				

YOU MUST MARK ☒ ALL BOXES BELOW that apply in the event that you, as an "Offeror," are awarded the contract and become a "Contractor":

☐ A. Wage Requirements Compliance

This Contractor as a "covered employer" will comply with the requirements under Section 11B-33A, Wage Requirements. Contractor and its subcontractors will pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the wage requirements effective at the time the work is performed. The Proposal price(s) submitted under this solicitation include(s) sufficient funds to meet the wage requirements. A "covered employer" must quarterly (January, April, July and October for the prior quarter) submit certified payroll records for all employees, and any subcontractor employees, governed by the Wage Requirements Law, for each payroll period to the Office of Business Relations and Compliance, Attn: Wage Program Manager. These payroll records must include the following: name; address; position/title; daily straight time hours worked; daily overtime hours worked; straight time hourly pay rate; overtime hourly pay rate; any deduction for health insurance; total gross wages paid for each period; and total net wages paid after any additions and deductions for each pay period.

☐ B. Exemption Status (if applicable)

This Contractor is exempt from 11B-33A, "Wage Requirements," because it is:

1. reserved-intentionally left blank.
- ☐ 2. a contractor who, at the time a contract is signed: has received less than \$50,000 from the County in the most recent 12-month period; and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A(b) (2).
- ☐ 3. a contract with a public entity. Section 11B-33A(b) (3).
- ☐ 4. a contract with a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c) (3) of the Internal Revenue Code. Section 11B-33A(b) (4) (**must complete item C below**).
- ☐ 5. an employer to the extent that the employer is expressly precluded from complying with this Section by the terms of any federal or state law, contract, or grant. Section 11B-33A(b) (8) (**must specify the law, or furnish a copy of the contract or grant**).

☐ C. Nonprofit Wage & Health Information

This Contractor is a Nonprofit organization that is exempt from coverage under Section 11B-33A(b) (4). Accordingly, the contractor has completed the 501(c) (3) Nonprofit Organization's Employee's Wage and Health Insurance Form which is attached. See Section 11B-33A(c) (2).

☐ D. Nonprofit's Comparison Price(s) (if desired)

This Contractor is a Nonprofit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blank quotation sheet on which it is submitting its price(s) in the RFP, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the wage requirements. For Proposal evaluation purposes, this price(s) will be compared to price(s) of another Nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the wage requirements. This revised information on the duplicate quotation sheet must be clearly marked as your Nonprofit organization comparison price(s). In order to compare your price(s), the revised information on the duplicate quotation sheet must be submitted with your Proposal, must show how the difference between your price(s) and your Nonprofit organization comparison price(s) was calculated, and will not be accepted after the Proposal opening date. See Section 11B-33A(c) (2).

☐ E. Wage Requirements Reduction (if applicable)

This Contractor is a "covered employer", and it desires to reduce its hourly rate paid under the wage requirements by an amount equal to, or less than, the per employee hourly cost of the employer's share of the health insurance premium. Contractor certifies that the per employee hourly cost of the employer's share of the premium for that insurance is:

\$ _____. See Section 11B-33A(d).

Contractor Certification

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or printed name		Date	<input type="checkbox"/>

501(c) (3) Nonprofit Organization's Employee's Wage and Health Insurance Form

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Please provide below the employee labor category of all employee(s) who will perform direct measurable work under this contract, the hourly wage the organization pays for that employee labor category, and any health insurance the organization intends to provide for that employee labor category:

Employee Labor Category	Wage per Hour	Name of Health Insurance Provider(s) and Plan Name* (e.g. ABC Insurer, Inc. , HMO Medical and Dental)

NOTE: IF NO HEALTH INSURANCE PLAN IS PROVIDED PLEASE STATE "NONE".

Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor

The Contractor and all Subcontractors must comply with the Prevailing Wage Law contained in Chapters 11B-33C and 20-75 of the Montgomery County Code. Prevailing wage means the wage rate paid by employers that is determined by a governmental authority, based upon a particular geographic area, for a given class of labor and type of project. The purpose of a prevailing wage is to ensure that construction workers who work on public works contracts are paid the going rate for their services. The prevailing wage rates are established by the State of Maryland and apply to all of the Contractor's employees and any and all Subcontractors. The Contractor and all Subcontractors must comply with all of the requirements of the Prevailing Wage Law including, but not limited to, the following:

1. Pay employees the prescribed rate as annually established by the State of Maryland Commissioner of Labor and Industry; the prevailing wage rates in effect on the date a solicitation is issued will apply throughout the term of a contract resulting from that solicitation;
2. Pay employees overtime for work more than 10 hours in any single day, work more than 40 hours in a work week, or work on Sunday or legal holiday;
3. Classify employees in their proper work classification in conformance with the schedule established by the State of Maryland Commissioner of Labor and Industry;
4. Electronically submit payroll records through www.LCPTracker.net, within 14 days after the end of each payroll period, to verify that Prevailing Wage rates have been paid to employees. The payroll records must include the following:
 - A. The name, address and telephone number of the Contractor or Subcontractor;
 - B. The name and location of the job;
 - C. Each employee's:
 - a. Name;
 - b. Current address unless previously reported;
 - c. Specific work classification;
 - d. Daily straight time and overtime hours;
 - e. Total straight time and overtime hours for the payroll period;
 - f. Rate of pay;
 - g. Fringe benefits by type and amount;
 - h. Gross wages.
5. If a Contractor or any Subcontractors are late in submitting copies of any payroll records required to be submitted under the Prevailing Wage Law, the County may deem Contractor's invoice(s) submitted to the County for payment unacceptable until the Contractor and Subcontractors provide the required records; and, the County may postpone processing payments otherwise due under the Contract or under an agreement to finance the Contract;
6. The Contractor and all Subcontractors must retain all payroll records for a period not less than five (5) years after the Work is completed;
7. The County may inspect the payroll records at any reasonable time and as often as it deems necessary;
8. The County may perform random or regular audits and investigate any complaint of a violation of the Prevailing Wage Law;

9. In the event the County determines that a provision of the Prevailing Wage Law has been violated, the County may withhold payment to the Contractor in an amount sufficient to pay each employee of the Contractor or any Subcontractors the full amount of wages due under the Prevailing Wage Law, and an amount sufficient to satisfy a liability of a Contractor or any Subcontractors for liquidated damages as provided under the Prevailing Wage Law, pending a final decision on the violation by the County;
10. Contractor may appeal a written decision of the Director, Department of General Services, that the Contractor violated a provision of the Prevailing Wage Law to the Chief Administrative Officer ("CAO"), within ten (10) days after receiving a copy of the decision. The CAO must designate a hearing officer to conduct a hearing upon receipt of a timely appeal. If the Contractor does not appeal a written decision within ten (10) days after receipt, the decision of the Director, Department of General Services, becomes final and binding;
11. Contractor and all Subcontractors must not discharge, or otherwise retaliate against, an employee for asserting any right under the Prevailing Wage Law or for filing a complaint of a violation;
12. An aggrieved employee is a third-party beneficiary of this Contract and the employee may by civil action recover the difference between the prevailing wage for the type of work performed and the amount actually received, with interest and a reasonable attorney's fee; and
13. Each Contract subject to the Prevailing Wage Law may specify the payment of liquidated damages to the County by the Contractor and any Subcontractors for any noncompliance with the Prevailing Wage Law. Liquidated damages are: \$10 for each calendar day that the payroll records are late; \$20 per day for each day that an employee is misclassified; and \$50 per violation of the requirement to post the prevailing wage rates at the work site.
14. Where the initial Contract Sum is below the \$500,000.00 threshold, but it is subsequently increased and exceeds the \$500,000.00 threshold due to an approved Contract Modification, the amount of any such Contract Modification that causes the Contract Sum to exceed the \$500,000.00 threshold is subject to the Prevailing Wage Law.
15. The Contractor and all Subcontractors must post a clearly legible statement of each prevailing wage rate in a prominent and easily accessible place at the Work Site during the entire time Work is being performed, in English and any other language that is primarily spoken by the employees, at the Work Site.

ATTACHMENT B.11: PERFORMANCE BOND**PERFORMANCE BOND** (95% of the Contract Amount)

_____, as surety ("Surety"), and _____, as principal ("Contractor"), enter into and execute this bond ("Performance Bond"), and bind themselves in favor of Montgomery County Maryland, as obligee ("Owner"), in the initial amount of \$_____ (ninety-five percent (95%) of the Contract Sum or such greater amount as the Contract Sum may be adjusted to from time to time in accordance with the Contract between the Contractor and Owner) (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with Montgomery County Maryland dated _____ (the "Contract") for construction of the **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** (the "Project"); and

WHEREAS, the Owners have required the Contractor to furnish this Performance Bond as a condition to executing the Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

1. **CONTRACT INCORPORATED; SURETY AND CONTRACTOR BOUND FOR FULL PERFORMANCE.** The Contract is incorporated by reference and made a part of this bond. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of the Contract Documents (as defined in the Contract) and all of their terms and conditions, both express and implied.
2. **OWNER'S AFFIDAVIT OF CONTRACTOR BREACH OR DEFAULT.** If the Owner shall provide to Surety the written affidavit of the Owner stating that the Contractor is in breach or default of the Contract, and that such breach or default remains uncured by the Contractor, then upon delivery of such affidavit to the Surety in the method for providing notices as set forth in Paragraph 7 below, Surety must promptly notify the Owner in writing which action it will take as permitted in Paragraph 3.
3. **SURETY'S OBLIGATION UPON DELIVERY OF OWNER'S AFFIDAVIT OF CONTRACTOR'S BREACH OR DEFAULT.** Upon the delivery of the Owner's affidavit of breach or default by the Contractor as provided in Paragraph 2 above, the Surety may promptly remedy the breach or default or must, within thirty (30) days, proceed to take one of the following courses of action:
 - a. **Proceed Itself.** Complete performance of the Contract including correction of defective and nonconforming Work through its own contractors or employees, approved as being acceptable to the Owner, in the Owner's sole discretion, provided, however, that Owner's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract (including the Contractor provided the Surety has remedied the default to satisfaction of the Owner). During this performance by the Surety the Owner will pay the Surety from its own funds only those sums as would have been due and payable to the Contractor under the

Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. During this performance Surety's payment bond must remain in full force and effect; or

- b. **Tender a completing contractor acceptable to Owner.** Tender a contractor, approved as being acceptable to the Owner (in the Owner's sole discretion), together with a contract for fulfillment and completion of the Contract executed by the completing contractor, to the Owner for the Owner's execution. Owner's discretion to approve Surety's completing contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated (as defined in the General Conditions of Contract) with the Contractor. Owner's discretion to approve Contractor as the completing contractor, however, shall be in Owner's sole subjective discretion. Upon execution by the Owner of the contract for fulfillment and completion of the Contract, the completing contractor must furnish to the Owner a performance bond and a separate payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond must be in the Penal Sum of the full cost to complete the Contract. The Owner will pay the completing contractor from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Contract (any sums in excess of the then remaining Contract balance less any sums due the Owner under the Contract), the Surety must pay to the Owner the full amount of those sums at the time the completing Contractor is tendered to the Owner so that the Owner can utilize those sums in making timely payment to the completing contractor; or
 - c. **Tender the Full Penal Sum.** Tender to the Owner the full Penal Sum of the surety bond. The Owner will refund to the Surety without interest any unused portion not spent by the Owner procuring and paying a completing contractor or completing the construction contract itself, plus the cost allowed under Section 4, after completion of the contract for fulfillment and completion of the Contract and the expiration of any applicable warranties; or
 - d. **Other Acts.** Take any other acts mutually agreed upon in writing by the Owner and the Surety.
4. **SURETY'S ADDITIONAL OBLIGATIONS.** In addition to those duties set forth herein above, the Surety must promptly pay the Owner (i) all losses, costs and expenses resulting from the Contractor's breach(es) or default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, plus (ii) liquidated or actual damages, whichever may be provided for in the contract, for lost use of the Project, plus (iii) procurement costs and fees and expenses, plus (iv) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
5. **SURETY'S WAIVER OF NOTICE.** The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed.

6. **NO THIRD PARTY BENEFICIARIES.** The Surety provides this Performance Bond for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee designated by attached rider, together with their heirs, administrators, executors, successors and assigns. No other party, person or entity has any rights against the Surety.
7. **METHOD OF NOTICE.** All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY:

Name: _____
Attention: _____
Street: _____
City, State, _____
Zip _____

CONTRACTOR:

Name: _____
Attention: _____
Street: _____
City, State, _____
Zip _____

OWNER:

Montgomery County Government DOT – Parking Management
Attention: Rick Siebert, Contract Administrator
100 Edison Park Drive, 4th floor
Gaithersburg, MD 20878

with a copy to:

Office of the County Attorney
Scott Foncannon, Associate County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850

8. **STATUTE OF LIMITATIONS.** Any statutory limitation, which may be contractually superseded, to the contrary notwithstanding, any action hereon may be instituted so long as the applicable statute of limitations governing the Contract (including any warranty period) has not run or expired or within three (3) years following Final Completion of the Contract (including any warranty period) and acceptance of the Work performed under the Contract by the Owner, whichever is longer.

9. **RECITALS.** The recitals contained in this Performance Bond are incorporated by reference herein and are expressly made a part of this Performance Bond.
10. **GOVERNING LAW.** This Performance Bond shall be governed by, and construed in accordance with the laws of the State of Maryland without regard to its conflict of laws provisions.
11. **VENUE.** In the event any legal action shall be filed upon this Performance Bond, venue shall lie exclusively in the Circuit Court for Montgomery County, Maryland.

SIGNATURE PAGE FOLLOWS

Contractor

Surety

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Date of Execution)

(Date of Execution)

END OF DOCUMENT